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In the Supreme Court

OF THE

United States

SPONSE NOT PRINTED

OCTOBER TERM, 1968

No. 626

THOMAS C. LYNCH, et al.,
Petitioners,

vs.

ROBERT O. GILMORE, JR., et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

Petitioners, Thomas C. Lynch, Attorney General of the State of California, et al., pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit rendered and entered August 16, 1968.

OPINIONS BELOW

The opinion of the Court of Appeals has not been reported, but is appended hereto as Exhibit A. The

order of the United States District Court is appended hereto as Exhibit B.

JURISDICTION

The judgment of the Court of Appeals was entered on August 16, 1968. The jurisdiction of this Court is invoked under Title 28, United States Code section 1257(3).

STATUTE INVOLVED

This case involves the interpretation of Title 28, United States Code, section 2281, 62 Stat. 968. This section reads as follows:

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

QUESTIONS PRESENTED

1. Can a single executive officer, such as the Director of Corrections of the State of California, be considered "an administrative board or commission" within the meaning of the statute?

2. Since the purpose of the statute is to avoid improvident injunctions against the enforcement of state statutes, may the requirement of a three-judge district court be waived by defendant state officers?

REASONS FOR GRANTING CERTIORARI
(Rule 19 Statement)

The special and important reasons why a writ of certiorari is sought are:

The holding of the Court of Appeals that regulations of the Director of Corrections of the State of California are to be regarded as orders "of an administrative board or commission" represents an unwarrantedly broad interpretation of a statute which this Court has repeatedly said should be strictly construed, and threatens to produce a rash of cases in which three-judge district courts would be required.

Considerations of efficient administration of the federal courts argue strongly in favor of construing the statute to hold that it is not jurisdictional, but may be waived by defendant state officers. This construction would accord with the purpose of the statute, as interpreted by this Court.

STATEMENT OF THE CASE

On October 27, 1966, respondent Robert O. Gilmore, Jr., and eighty-eight other inmates of the California State Prison at San Quentin filed in the

United States District Court for the Northern District of California a complaint naming as defendants the People of the State of California, the Department of Corrections of the State of California, Richard A. McGee, Walter Dunbar and Lawrence E. Wilson. The complaint sought an injunction against the enforcement of certain rules adopted by the Director of Corrections relating to the contents of prison law libraries and describing the personally-owned legal opinions which inmates would be permitted to possess. On January 10, 1967, the District Court ordered the action consolidated with three others brought by other inmates, and appointed counsel for plaintiffs.

On March 14, 1967, counsel for plaintiffs filed a motion for preliminary injunction and for the convening of a three-judge district court.

On April 4, 1967, counsel for plaintiffs filed an amended complaint, which named as defendants, in addition to those previously named, the Honorable Thomas C. Lynch, Attorney General of California, other state officers, and eighty Does. The amended complaint alleged that defendants had engaged in a conspiracy to deprive prisoners of due process and equal protection of the laws. The acts complained of consisted of the adoption of certain rules and regulations of the Director of Corrections and other alleged acts.

The complaint demanded a jury trial on contested issues of fact, and the convening of a three-judge district court "to hear and determine, on the basis of facts found by the jury, plaintiffs' demand

for preliminary and permanent injunction." It also demanded that defendants be enjoined from enforcing the changes in prison regulations adopted by the Director of Corrections, in Department of Corrections Transmittal Letter 26/66, dated September 19, 1966. The complaint also sought money damages.

On April 14, 1967, defendants filed a memorandum in opposition to the motion for convening of a three-judge District Court. The motion was denied on June 12, 1967, and an amended order was signed on July 6, 1967, stating the basis for denial. This order is reprinted as Exhibit B. Plaintiffs filed a timely notice of appeal on July 12, 1967, pursuant to 28 U.S.C. section 1292(b).

On August 16, 1968, the Court of Appeals reversed the judgment of the District Court, and remanded the cause "with instructions that the order be set aside and for further proceedings looking toward the convening of a three-judge court."

On September 9, 1968, the Court of Appeals stayed the issuance of its mandate, provided that the instant petition were filed by October 9, 1968, the stay to continue until final disposition by this Court of the instant petition.

ARGUMENT

I

THE COURT OF APPEALS ERRED IN HOLDING THAT A SINGLE EXECUTIVE OFFICER, THE CALIFORNIA DIRECTOR OF CORRECTIONS, IS "AN ADMINISTRATIVE BOARD OR COMMISSION" WITHIN THE MEANING OF 28 U.S.C. SECTION 2281.

Since 28 U.S.C. section 2281 provides for a three-judge District Court only to hear and determine applications for injunctions restraining the enforcement, operation or execution by any state officer of any state statute or "order made by an administrative board or commission acting under State statute," the determination of the Court of Appeals that the rules of the Director of Corrections of the State of California were orders of "an administrative board or commission" was essential to the judgment of the Court of Appeals.

This determination is in error. It is wrong, first, because it is a denial of the principle that A is A. It is wrong, second, because it is a radical and unwarranted departure from the principles enunciated by this Court for the construction of 28 U.S.C. section 2281. And, in its practical consequences, it threatens to bring about a rash of cases in the United States district courts, particularly those in California, which must be handled by district courts of three judges, and consequently threatens to deluge this Court with appeals as of right from the judgments entered by those courts.

The Court of Appeals was plainly in error when it equated a single executive officer with "an adminis-

trative board or commission." The rules in question were promulgated by the Director of Corrections of the State of California, who is vested with the sole power to make rules and regulations, which he may change at his pleasure. See Cal. Pen. Code § 5058. If statutory language is to be construed according to the common and accepted meanings of the words used, it is clear that one man cannot constitute a "board or commission." "Board" and "commission" are defined in Webster's New International Dictionary (2d ed. 1938) in terms of a group or number of individuals. On the few occasions in which the courts have been called upon to define either of these words, they have always recognized that they contemplate a group of two or more persons. See *City of Louisville Municipal Housing Comm'n v. Public Housing Administration,* 261 S.W.2d 286, 288 (Ky. 1953); *Board of Health of New Jersey v. Inhabitants of Town of Phillipsburg,* 85 N.J. Eq. 161, 96 Atl. 62 (Ct. Err. & App. 1915); *Wilson v. Bleloch,* 125 App. Div. 191, 109 N.Y. Supp. 340, 343 (1908) (dissenting opinion); *Riddle v. Fairforest Finishing Co.,* 198 S.C. 419, 18 S.E.2d 341, 343 (1942).

Very closely in point is *Standard Sec. Serv. Corp. v. King,* 161 Tex. 448, 341 S.W.2d 423 (1960), where the court dealt with a state statutory analog to 28 U.S.C. section 2281, which allowed a direct appeal to the state Supreme Court from any order of any trial court granting or denying an interlocutory or permanent injunction on the ground of the unconstitutionality of any state statute or the validity of any

administrative order "issued by any State Board or Commission under any statute of this State." In dismissing an appeal from an order denying an injunction against an order of the State Securities Commissioner, the court held that the Commissioner was not a "State Board or Commission" within the meaning of the statute. "A single administrative or executive officer does not constitute a 'State Board or Commission,' either in a legal sense . . . [citing cases] or in common understanding" 341 S.W.2d at 426.

The Court of Appeals relied upon the only federal case to consider the precise question, *McCormick & Co. v. Brown,* 52 F.2d 934, 937 (4th Cir. 1931). That case indeed stated that "a single individual, such as the prohibition commissioner of the State of West Virginia may constitute a state administrative board or commission within the meaning of the act." However, the statement was made with no analysis or reasoning whatever, and cited in support only two cases, both decided by this Court, neither of which lends any direct support to the statement. The reliance by the Court of Appeals upon *McCormick* merely perpetuates an error.

Whatever vitality *McCormick* may have had seems clearly to have been sapped by the subsequent case of *Phillips v. United States,* 312 U.S. 246 (1941), where this Court, in holding that the orders of a state governer are not those of "an administrative board or commission," established a salutary and still viable principle governing construction of 28 U.S.C.

section 2281. This Court there stated that because the three-judge procedure dislocates the administration of district and circuit courts and places burdensome demands upon this Court's appellate docket, the section is to be read "not as a measure of broad social policy to be construed with great liberality, but as an enactment technical in the strict sense of the term and to be applied as such." *Id.* at 251. The Court of Appeals recognized but did not adhere to this principle in the judgment below. Instead, it found support in the following language from *Phillips, supra:*

> "The crux of the business is procedural protection against improvident statewide doom by a federal court of a state's legislative policy." *Ibid.*

The Court of Appeals reasoned that

> "The regulation here is statewide in its application and is as effective and authoritative in its establishment of state policy as if it had been announced by a board of more than one member." Opinion, p. 3.

Although this observation may be sound, the result reached by the Court of Appeals does not follow. The statute in question does not use the phrase "legislative policy." The phrase is from an opinion of this Court, and represents a construction of the statute. It is a sound construction if it is regarded as establishing the principle that a state legislative policy, for purposes of the statute, can only be made by the Legislature or "an administrative board or commission." The mere fact that a single executive

officer may make orders which, in another jurisdiction, would be made only by an administrative board or commission does not make the single officer "an administrative board or commission" for any purpose, and certainly not for the purpose of construing a statute which this Court has stated must be given a very strict construction.

The decision of the Court of Appeals is profoundly at odds with the purpose of the statute construed. This Court has authoritatively noted the purpose of the statute in *Swift & Co. v. Wickham,* 382 U.S. 111, 116-119 (1965). It was there recognized that the statute was enacted "to assuage a growing popular displeasure with the frequent grants of injunctions by federal courts against the operation of state legislation regulating railroads and utilities in particular." *Id.* at 116. The specific incidents leading to enactment of the statute were issuances of ex parte restraining orders against the operation of railroad and utility regulation statutes, promptly upon the signing of such statutes into law. In apparent response to the trend vesting the responsibility for promulgating specific and detailed utility and railroad regulations in boards or commissions, the statute was amended "to cover challenges to orders of state administrative commissions" in 1913. *Id.* at 119 n.14. Recognizing that the purpose of the statute was "to alleviate a specific discontent within the federal system," *id.* at 116, a discontent which has withered with the demise of the doctrine of economic due process, this Court has long sought to circumscribe as nar-

rowly as possible the scope of section 2281 by restricting its coverage largely to those situations which originally prompted the enactment of the section. The *Swift* decision itself, by removing Supremacy Clause questions from the operation of section 2281, excised a vast number of actions from the statute's scope, even though such excision required the strictest possible construction of section 2281.

We ask, by contrast, only for a construction that is at once consistent with the language and with the purpose of the statute in question. The Director of Corrections of the State of California does not stand in the same position as, for example, a state commission regulating railroads and utilities. Such commissions are commonly composed of several members appointed for staggered terms, who often owe their allegiance to different appointing officers, and who make and amend regulations by majority vote, often only after holding public hearings. By contrast, the Director of Corrections serves at the pleasure of the Governor, Cal. Pen. Code § 5051, makes and amends regulations at his sole discretion, see Cal. Pen. Code § 5058, and must therefore be considered purely an agent of the Governor. His orders, like those of the Governor himself, see *Phillips v. United States, supra,* should be held outside the scope of 28 U.S.C. section 2281.

If the opinion of the Court of Appeals, however clearly erroneous it may be, did not threaten significant results beyond the scope of the case in which it

was rendered, it might not be worth this Court's time to review. But the principle stated therein threatens to impose enormous burdens on the lower federal courts and this Court. The Director of Corrections has made numerous rules and regulations, a great many of which are constantly under siege by prisoners bringing actions in forma pauperis under the Civil Rights Act. All of these attacks seeking injunctive relief will require, under the decision of the Court of Appeals, the convening of three-judge courts, save those in which no substantial federal question is presented.

Under the standards established by this Court in *Ex parte Poresky,* 290 U.S. 30, 32 (1933), a question is insubstantial only when it is "obviously without merit" or when "its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject . . . ." This Court has very rarely spoken in the area of prisoners' rights under the Constitution. If these rights are to be given some development, as seems possible by this Court's grant of certiorari in *Johnson v. Avery,* October Term, 1967, No. 1195, there will indeed be few federal questions raised by prisoners attacking rules of the Director of Corrections that can be held so clearly insubstantial as not to require their decision by a three-judge district court. Since an appeal as of right lies to this Court from any judgment entered by a three-judge district court, it appears that the undue expansion of the jurisdiction of such courts will dislocate the administration of not only the lower

federal courts, but of this Court as well. This fact, we submit, renders the issues presented by the instant petition of sufficient importance to deserve the consideration of this Court.

II

THIS COURT SHOULD HOLD THAT, SINCE 28 U.S.C. SECTION 2281 WAS ENACTED SOLELY TO PREVENT THE IMPROVIDENT INVALIDATION OF STATE STATUTES, ITS BENEFITS SHOULD BE WAIVABLE BY DEFENDANT STATE OFFICERS.

In the instant case, defendants-petitioners objected at all times to the convening of a three-judge district court, which was sought solely at the instance of plaintiffs-respondents. Under existing law, this fact is irrelevant, since the statute has been held jurisdictional. In *Stratton v. St. Louis S.W. Ry.*, 282 U.S. 10 (1930), this Court held that if a complaint states a cause of action requiring the convening of a three-judge court, a single judge is without jurisdiction to hear the complaint, and even a stipulation of the parties will not confer jurisdiction upon a single judge. *Accord, Riss & Co. v. Hoch,* 99 F.2d 553 (10th Cir. 1938). We ask this Court to reconsider *Stratton* and hold that, consistent with the language of section 2281 and the purposes of its enactment, it should be construed so that a three-judge district court is not required if not requested by defendant state officers.

As brought out under Argument I, *supra,* this Court has recognized that the sole purpose for the en-

actment of 28 U.S.C. section 2281 and its predecessor statutes was to protect the states from the improvident invalidation of their statutes, and to provide for an expeditious final determination by this Court of any order invalidating a state statute, so that the operation of state regulatory problems would not be stymied during the pendency of litigation through the lengthy processes of appeals to the Courts of Appeals and further appeals or petitions for writs of certiorari to this Court. It would be entirely consistent with the purpose of the statute to hold that if defendant state officers do not desire the benefits of the statute, they may waive said benefits and submit themselves to the jurisdiction of a single-judge district court.

Nothing in the language of the statute itself precludes such a construction. The statute does not say that no determination of the merits of a case or controversy within its contemplation shall be had but by a court of three judges. It states only that "An interlocutory or permanent injunction . . . shall not be *granted* . . . unless the application therefor is heard and determined by a district court of three judges . . . . " (Emphasis added.) Thus, the section could reasonably be interpreted as allowing a single judge to deny an injunction, but requiring him to convene a three-judge district court to hear and determine the matter if he himself is disposed to grant the injunction. This procedure would be analogous to that commonly used by the Courts of Appeals, whereunder a panel, if disposed to overrule a previous decision of

the same court, will request a hearing of the Court of Appeals en banc, to avoid improvident overruling of the court's prior decisions.

For that matter, it would not be entirely inconsistent with the language of the statute to hold that a defendant state officer may waive the three-judge court requirement even if an injunction is to be granted. The instant case is an excellent illustration. One of the defendants is the Director of Corrections of the State of California, whose rules are being challenged. If he wished, he could simply rescind the rules in question, thereby mooting those portions of the litigation for which the Court of Appeals held a three-judge court to be required. And in *Jeffers v. Whitley*, 197 F. Supp. 84, 90 (M.D.N.C. 1961), it was held that where the defendant admitted the unconstitutionality of the statute under attack, a three-judge court was not required. If a defendant state officer can voluntarily submit himself to the issuance of an injunction by a single judge, or can defeat the three-judge requirement by admitting the unconstitutionality of the statute under attack, we see no reason why he should not be able to waive altogether the benefits of 28 U.S.C. section 2281.

A holding by this Court that the requirements of the section in question are waivable by defendant state officers would have the salutary practical effect of substantially diminishing the number of actions which must be heard before three-judge district courts, and consequently diminishing the number of obligatory appeals to this Court, thereby greatly

simplifying the administration of justice in the federal courts. No substantial right of plaintiffs would be lost by such a holding, since 28 U.S.C. section 2281 was in no sense enacted for the benefit of persons seeking to attack state statutes, and as presently interpreted, has the effect of placing a burden upon them to insure that the actions they bring are tried before the proper tribunal. In the instant case, the effort on behalf of plaintiffs-respondents to carry this burden has already delayed the progress of the action for some fifteen months. Such procedural confusion could be avoided in subsequent cases by a simple holding that defendant state officers may waive the benefits of section 2281 and submit themselves to the jurisdiction of a single-judge federal court.

While we are hesitant in asking this Court to reconsider one of its own cases we note that this Court recently overruled another of its own cases in the area of three-judge courts. See *Swift & Co. v. Wickham, supra,* 382 U.S. at 116, overruling *Kesler v. Department of Public Safety,* 369 U.S. 153 (1962).

In light of this Court's decision in *Stratton, supra,* it would have been futile for us to raise this issue in the Court of Appeals. And we note that our failure to do so, while it would justify this Court in foreclosing us on the issue, does not preclude this Court from considering it. See *Sibron v. New York,* 392 U.S. 40, 50 n.8 (1968).

CONCLUSION

For all the foregoing reasons, we respectfully submit that this Court should issue a writ of certiorari to review the judgment of the Court of Appeals.

Dated, San Francisco, California,
October 8, 1968.

THOMAS C. LYNCH,
Attorney General of the State of California,
ROBERT R. GRANUCCI,
Deputy Attorney General,
GEORGE R. NOCK,
Deputy Attorney General,
Attorneys for Petitioners.

(Exhibits Follow)

Exhibit A

United States Court of Appeals
for the Ninth Circuit

Robert O. Gilmore, Jr., et al., Appellants, vs. Thomas C. Lynch, et al., Appellees.	Nos. 22,052 A-B-C-D-E-F

[August 16, 1968]

On Appeal from the United States District Court for the Northern District of California

Before: CHAMBERS, MERRILL and ELY, Circuit Judges

MERRILL, Circuit Judge:

This appeal is taken from an interlocutory order of the District Court for the Northern District of California denying petitioners' motion for the convening of a three-judge court pursuant to 28 U.S.C. §2281.[1]

[1]"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

The appeal is taken pursuant to 28 U.S.C. §1292(b), the district judge having, in his order, certified that in his opinion the order involved "a controlling question of law as to which there is substantial ground for difference of opinion," and that "an immediate appeal from the order may materially advance the ultimate termination of the litigation." The controlling question as certified was whether appellants' claims involved a substantial question of constitutional law under the standards established in *California Water Service Co. v. City of Redding,* 304 U.S. 252 (1938), and *Ex Parte Poresky,* 290 U.S. 30 (1933).[2]

Appellants are 89 inmates of the California State Prison at San Quentin. The complaint names as defendants the People of the State of California, various prison officials and the head of the State Department of Correction. Appellants seek an injunction against the enforcement of certain rules adopted by the State Director of Corrections and contained in Department of Correction Transmittal Letter No. 26/66, dated September 19, 1966, relating to the contents of prison law libraries and the future prison policy as to the obtaining and keeping by prisoners of private law books and court opinions.[3] Appellants

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[2]In *Poresky* the Court stated:

"The question may be plainly unsubstantial, either because it is 'obviously without merit' or because 'its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy.'" 290 U.S. at page 32.

[3]These regulations are as follows:

"330.941. There shall be established in each institution a standard set of basic codes and references which shall consist of and be limited to:

contend that these regulations violate the due process and equal protection clauses of the Fourteenth Amendment in that they seriously infringe their rights of access to the courts and discriminate between indigent and affluent prisoners (in that the latter can obtain outside counsel for legal research, thus gaining effective access to the courts).

In our judgment the constitutional questions thus posed cannot be said to be plainly unsubstantial under the *Poresky* standards. Courts are currently struggling with the question of the extent of a prisoner's rights to have access to legal materials, e.g., our opinion in *Hatfield v. Bailleaux,* 290 F.2d 632 (9th Cir.), *cert. denied,* 368 U.S. 862 (1961). The Supreme Court has not yet spoken on the subject and the law can hardly be said to be settled.

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1. The California Penal Code
2. The California Welfare and Institutions Code
3. The California Health and Safety Code
4. The California Vehicle Code
5. The United States and California Constitutions
6. A recognized law dictionary (such as Black's)
7. Witkin's California Criminal Procedures (Bender Moss Co.)
8. Subscription to California Weekly Digest
9. California Rules of Court
10. Rules of the United States Court of Appeals (Ninth Circuit)
11. Rules of the United States Supreme Court

330.042 Sufficient copies will be maintained to provide reasonable access on not less than a weekly basis.

330.043 All State owned law books and references will be maintained in a suitable place and no State owned books or references are to be removed from the designated 'law library,' except to administrative segregation units as scheduled.

330.044 Inmates will not be permitted to purchase or receive personally owned law books or reference material.

330.045 Inmates may receive or purchase a single copy of an opinion or decision in their own case (commonly known as 'slip opinions') and retain it in their own possession. * * *"

We conclude that the District Court was in error in its ruling that no substantial question of constitutional law was presented.

Appellees urge affirmance upon two additional grounds:

First, they contend that the regulations in question were not those of an "administrative board or commission" under §2281, but rather were promulgated by one man—the State Director of Correction.

We find no merit in this distinction. While the statute making provisions for three-judge courts is to be regarded as "an enactment, technical in the strict sense of the term and to be applied as such," *Phillips v. United States,* 312 U.S. 246, 251 (1941), still, as the Court in that case recognized, "The crux of the business is procedural protection against improvident statewide doom by a federal court of a state's legislative policy." 312 U.S. at page 251.

The regulation here is statewide in its application and is as effective and authoritative in its establishment of state policy as if it had been announced by a board of more than one member. See *McCormick & Co. v. Brown,* 52 F.2d 934, 937 (4th Cir. 1931), *aff'd* (without noting the particular point), 286 U.S. 131 (1932).[4]

Second, appellees contend that appellant's motion for a three-judge court was properly denied since the complaint not only attacks the regulation promulgated

[4]In *Herkness v. Irion,* 278 U.S. 92 (1928), the Court considered a regulation promulgated by a single person without commenting on that fact.

by the State Director of Corrections but also, and primarily, is directed at certain prison practices allegedly followed at San Quentin which are not statewide in application and not properly the subject of three-judge-court jurisdiction.

This, however, is no justification for refusal to convene a three-judge court as to the tendered issues which are properly within its jurisdiction. Remaining issues can be withheld for single-judge determination. See Wright, *Federal Courts,* 165 (1963).

Reversed and remanded with instructions that the order be set aside and for further proceedings looking toward the convening of a three-judge court.

Exhibit B

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Telephone (415) 771-5950
Attorney for Plaintiffs/Appellants

United States District Court for the
Northern District of California

Nos. 45878, 46297, 46298, 46299, 47015, 45749, 46495, 47111
Civil

John Van Geldern, et al., Plaintiffs,
v.
Thomas C. Lynch, et al., Defendants.

AMENDED ORDER DENYING PLAINTIFFS' MOTION FOR THE CONVENING OF A THREE-JUDGE DISTRICT COURT

It is ordered that Plaintiffs' Motion for the Convening of a Three-Judge Court pursuant to 28 U.S.C. § 2281 and § 2284 is hereby Denied. This order involves a controlling question of law as to which there is substantial ground for difference of opinion, and an immediate appeal from the order may materially advance the ultimate termination of the litigation. The controlling question of law which is involved is

whether Plaintiffs' claims, that Defendants' prison regulations should be enjoined as depriving Plaintiffs of Constitutional rights of access to the courts and equal protection of the laws, involve one or more substantial questions of Constitutional law under the standards established in *California Water Service Co. v. City of Redding,* 304 U.S. 252 (1938) and *Ex parte Poresky,* 290 U.S. 30 (1933).

Dated: July 6, 1967.

Albert C. Wollenberg,
United States District Judge

Filed
Jul 6 1967
Clerk, U. S. Dist. Court
San Francisco